DOCUMENT RESUME

ED 038 436 UD 009 612

AUTHOR	Barker, Horace
TITLE	The Federal Retreat in School Desegregation. Special Report.
INSTITUTION	Southern Regional Council, Atlanta, Ga.
PUB DATE	Dec 69
NOTE	76p.
AVAILABLE FROM	Southern Regional Council, Inc., Atlanta, Ga. ($.50; $.40 in bulk)
EDRS PRICE	EDRS Price MF-$0.50 HC-$3.90
DESCRIPTORS	Administrator Attitudes, Community Attitudes, *Federal Legislation, *Federal State Relationship, Integration Effects, Leadership Responsibility, Racial Attitudes, *School Integration, Southern Attitudes, *Southern Schools, Supreme Courts
IDENTIFIERS	*Mississippi, NAACP, National Association Advancement Colored Peoples, OCR, Office Of Civil Rights, Southern Regional Council

ABSTRACT

This special report, the fourth of a series commenting on the progress of school desegregation in the South, traces the turn of events since the 1968 report. The influence of the coming of the Nixon administration, the "go slow" approach to desegregation in the Office of Civil Rights (OCR) of the Department of Health, Education and Welfare (DHEW), changes in policy of OCR and retreat from earlier OCR desegregation policies, the Whitten amendments to the DHEW-Labor appropriations bill, and the delays in the administrative process are surveyed and related to the bill, and the delays in the administrative process are surveyed and related to the attitudes held, the positions taken, and the roles played by the Chief Executive, administrative officials, Senators, Congressmen, and Southern community leaders. Circumstances relating to and the reactions in Mississippi to the July 3, 1969 order are described, with the focus on the role of the National Association for the Advancement of Colored Peoples in bringing about a reversal of a decision of the U. S. Fifth Circuit Court to delay school desegregation, culminating in a new Supreme Court ruling on October 29, 1969 affecting the "all deliberate speed" clause of the 1954 Brown decision. The response of local (Southern) community leaders to federal policies and the "weaknesses in Court-ordered desegregation" are also discussed. (RJ)

ED038436

09612 E

SPECIAL REPORT

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

SOUTHERN REGIONAL COUNCIL
5 Forsyth Street, N.W., Atlanta 3, Georgia

THE FEDERAL RETREAT IN SCHOOL DESEGREGATION

UD 009 612

ED038436

THE FEDERAL RETREAT
IN
SCHOOL DESEGREGATION

Horace Barker

Southern Regional Council, Inc.
December, 1969

Price: .50 each
Bulk: .40 each

TABLE OF CONTENTS

Page

INTRODUCTION iii

PART I. COMPROMISE WITH COMMITMENT 1

- Setting the Stage 1
- The Administration's Team 3
- The Policies Change 6
- The July 3 Statement 7
- Politics and the Pace of Desegregation 10
- Retreat Without Confrontation 18
- The Whitten Amendments 24
- Delays Inherent in the Administrative Process 25

PART II. CLIMAX IN MISSISSIPPI 30

- The Administration Rebuked 30
- The Administration's Reaction 37

PART III. RESPONSE IN LOCAL DISTRICTS . . . 47

PART IV. THE ROLE OF THE JUDICIARY 58

- Weaknesses in Court-Ordered Desegregation 58
- Justice Department Inaction 61

PART V. CONCLUSION 67

INTRODUCTION

Since 1965, the Southern Regional Council has issued three reports commenting on the progress of school desegregation and the mood of the South, criticizing where we thought necessary those federal agencies charged with enforcement. Our 1968 report, in turn, drew sharp criticism from some federal officials who felt that we were overly harsh in our indictment of their efforts.

A new administration has taken office since our last report. Again, we have viewed the federal administrative role as critically as we think the occasion demands. We do not do so with the purpose of making partisan comparisons; however, we feel an obligation to note that the mistakes of the past (and they were numerous -- and oftentimes they were the result not only of administrative incompetence but political compromise with justice) were never made in an atmosphere of outright intransigence. Somehow, beginning under President Eisenhower at Little Rock, southern civil rights forces have felt that the tremendous power of the federal executive was behind their efforts, whether or not it was always manifested in the most desirable or effective ways.

In 1969, it is no longer possible to be so charitable. This year there has seemed to be a deliberate effort at work in the federal administrative machinery to reverse such progress in school desegregation as has already been so dearly won. That effort, if not demonstrably successful in diminished percentages of students in desegregated schools, had cynically held out the hope to southern segregationists that the law of the land would not really have to be obeyed. On October 29, however, the U. S. Supreme Court in ruling on 30 Mississippi school cases, ordered immediate end of segregation, striking down in the process the "all deliberate speed" wording of its 1954 Brown decision. The decision helped restore the shattered faith of civil rights advocates in the federal process, but, despite all reason and all past experience, the likelihood, sadly, seems to be that the false hope engendered by the administration has laid the seed for new resistance in the Deep South.

It might be argued that the administration has simply followed what it has divined as the national mood, that it has come to think that the majority of the American people, for the moment anyway, no longer favor the principle of a desegregated society. If such is in fact the case (and we by no means conclude that it is), no greater indictment really could be made of the administration. Leadership that truly leads does so as much by moral example as by administrative maneuver. To date, as the remainder of this report illustrates, such leadership has yet to be in evidence from the highest office in the land.

Robert E. Anderson, Jr.
Editor, SRC Publications

PART I

COMPROMISE WITH COMMITMENT

Setting the Stage

In 1963, after nine years of court litigation following the 1954 Brown decision, only 1.17 per cent of the black students in 11 southern states were attending schools with white students. Five more years of administrative enforcement authorized by Title VI of the 1964 Civil Rights Act placed 20.3 per cent of the region's black children in desegregated schools during the 1968-69 school year. Federal funds had been terminated in 123 southern school districts.

As the 1968 elections approached, southern segregationists, encouraged by the apparent influence of some southern senators at the Republican National Convention, were urging local educators to hold back on further desegregation plans. In South Carolina, television commercials showed Senator Strom Thurmond endorsing Nixon and reporting that the candidate favored freedom-of-choice plans.

For his part, the nominee gave little indication of what his school desegregation policies might be. He was, his critics noted, sufficiently ambiguous as to satisfy southern segregationists without fatally damaging his support among northern Republicans. In one interview broadcast in North and South Carolina, he stated explicitly that segregation should not be perpetuated and that the Brown decision was correct.

Although Nixon criticized the use of freedom-of-choice plans as a camouflage for continued segregation, he also said that withholding funds from school districts which refused to integrate was a "dangerous policy."

> When you . . . say that it is the responsibility of the federal government and the federal courts to, in effect, act as local school districts in determining how we carry . . . out /the Brown decision/ and then to use the power of the federal treasury to withhold funds or give funds in order to carry it out, then I think we are going too far . . . In my view, that kind of activity should be very scrupulously examined and in many cases, I think should be rescinded.[1]

In subsequent news conferences in Anaheim, California, and Detroit, Nixon stated that federal aid should be denied in a " . . . clear case of segregation." At the same time, he claimed that HEW had exceeded the intent of Congress and was trying to implement "enforced integration."[2]

Noting the logic of such statements, one southern paper editorialized, "Nixon endorsed the 1954 Supreme Court decision . . . however, he opposed virtually every effort short of divine revelation for stepping up the desegregation process."[3]

As a result of such equivocation, many observers, particularly in the South, expected a significant change in school policies if Nixon were elected. Thus the Washington

---

[1] The New York Times, September 13, 1968.

[2] The Charlotte Observer, October 10, 1968.

[3] Ibid., September 15, 1968.

Post noted: "While carefully hedged, the net effect /of Nixon's Carolina statement/ was to express doubts about federal action in withholding funds to eliminate dual systems."[4]

An editorial in the Columbia, South Carolina, State used selected quotations from Nixon's speeches to portray the candidate as favoring "quality education" without a "federal agency punishing" local communities and as being against bussing.[5]

Regardless of Nixon's willingness to enforce the law and his personal aversion to discrimination, many segregationists in the South saw a new day of hope.

The Administration's Team

The background and reputation of top policy-makers will usually provide some indication of how their respective agencies will interpret and enforce the law. Under the present administation, key positions in the Department of Justice and in the Department of Health, Education, and Welfare (HEW) have been filled by men with contrasting viewpoints on what the government should do about desegregating schools.[6]

---

[4] The Washington Post, September 13, 1968.

[5] The Columbia State, September 20, 1968.

[6] James K. Batten, "The Nixonians and School Desegregation," Southern Education Report, June, 1969, p. 26.

The general counsel in HEW's Office for Civil Rights (OCR) is responsible for guiding the administrative enforcement proceedings against a school district which refuses to eliminate its segregated school system. This position was filled by Robert C. Mardian who had expressed publicly his dislike for termination of funds as a means of enforcing Title VI.[7] In March, 1969, someone leaked to the press a Mardian memorandum to Robert Finch, Secretary of HEW, in which Mardian suggested that the department's desegregation guidelines be eased -- but without any public announcement.[8]

In the Justice Department, Attorney General John Mitchell and Jerris Leonard, head of the Civil Rights Division, reportedly favor a "go slow" approach to desegregation.[9] Leonard himself went to Jackson, Mississippi, to defend in federal court the administration's decision to seek a delay in desegregating 30 Mississippi school districts. When attorneys on his own staff protested the administration's position, Leonard responded in a letter declaring in part that the administration is "determined to achieve /desegregation/ through a sympathetic approach to the problems of all persons affected . . . We will . . . use the technique of negotiation and conciliation before invoking coercive remedies."[10]

---

[7] *Ibid*., p. 27.

[8] *Ibid*.

[9] See *Newsweek*, September 8, 1969, pp. 29-30, for a summary of the Attorney General's views on civil rights matters, including desegregation policy.

One other administration official apparently having a very influential voice in the determination of southern desegregation policies is Harry Dent, former aide to Senator Strom Thurmond (R.-S. C.). Dent is one of the President's chief political advisors. Both Mitchell and Dent have been reported as favoring a "southern strategy" for the Nixon administration which will "combine the strength of Richard Nixon and George Wallace into a national Republican majority."[11]

Despite the attitudes of the officials just described, civil rights advocates were able to take some hope in other appointments to sensitive policy-making positions. Robert Finch took office with relatively progressive credentials on racial matters as did Leon Panetta, Finch's choice as director of OCR. Panetta had been a legislative aide to former Senator Thomas H. Kuchel, a liberal California Republican. As an advisor to Finch before the inauguration, Panetta had been a firm advocate of strong civil rights action. Other appointments buttressing the liberal side included Under Secretary John G. Venenan, who believed "HEW had a 'social' as well as a legal duty to push ahead on desegregation,"[12] and James E. Allen, former commissioner of education in the state of New York.

---

[10] The Washington Post, September 2, 1969.

[11] Quoted from Drew Pearson and Jack Anderson's column in the Atlanta Journal-Constitution, August 17, 1969. See also the column by Rowland Evans and Robert Novak, the Washington Post, August 14, 1969.

The appointment of men with such greatly varying commitments to civil rights may help to explain the numerous erosions in desegregation policy during the past ten months. Those administrators and staff personnel wanting to enforce the law consistently faced overwhelming political opposition within and without official administration circles.

The Policies Change

When the new administration was inaugurated, OCR was enforcing school desegregation according to the policies issued in March, 1968, and revisions made in June, 1968. These policies, for the first time, set an actual deadline for elimination of the dual school system.

In summary, all school districts were required to be completely desegregated by the 1970-71 school year, and in most cases, by September 1968 or 1969. Only districts with black majorities or with construction difficulties were eligible to apply for a 1970-71 deadline. If a 1970 terminal date was accepted, the district had to take sufficient steps in the interim period to assure that the deadline would be met. Such interim steps normally included actual movement of students producing desegregation of one or more grade levels. Ideally, under these policies, each school population should ultimately reflect the same racial ratio as the population of the school system as a whole.

---

[12] Batten, op. cit., p. 27.

The first major test of the new administration's policies came early -- with results that presaged future decisions. On January 29, five southern school districts had been scheduled to have their federal funds forfeited, but Secretary Finch, apparently trying to please both segregationists and moderates, succeeded only in obscuring the administration's intentions. He first terminated the funds and then gave the districts the opportunity to have them restored retroactive to the date of termination, if they submitted acceptable desegregation plans within 60 days. Two of the districts submitted such plans, and had their funds restored. Three failed to do so. Their funds were terminated.

Subsequent to the decision on the first five districts, Secretary Finch approved termination orders for nine additional districts for a total of 14 terminations authorized between January 20 and July 5.

The July 3 Statement

The first official signal of retreat came when new desegregation policies were issued on July 3, 1969. Enunciated in a joint statement by HEW and Justice, those policies affirmed that the administration in the future would place greater emphasis on Justice Department litigation than on administrative enforcement of Title VI. The statement also seemed to offer something to everyone concerned with segregated schools. For those wanting yet more time to comply with the law, the administration said:

> "It is not our purpose here to lay down a single artibrary date by which the desegregation process should be completed in all school districts."

For those stubborn people who wanted the law enforced, the statement said that school districts generally would have to provide for full compliance during the 1969-70 school year. But, it also said that the administration would consider " . . . sound reasons for some limited delay . . . tak/ing/ into account only bona fide educational and administrative problems." Although the announcement also purported to "strip away the confusion which has too often characterized discussion of this issue . . . ," it simply added to the confusion with respect to what constituted a "bona fide educational" problem and how much desegregation the southern districts would have to achieve during the coming year.

On another point, it seemed to many to be deliberately misleading. "Guidelines," it said, "are administrative regulations -- not court interpretations of the law." This, of course, was certainly true, but the fact is that the Fifth Circuit Court of Appeals had approved and upheld as constitutional the most controversial part of the 1967 guidelines in its Jefferson and Macon County decisions.

The thrust of the announcement was simultaneously to declare that the 1969-70 deadlines would be both relaxed and, maybe, hopefully enforced. Jerris Leonard, the assistant attorney general in charge of civil rights enforcement, sagely noted, "I assume that there are people who can read it any way they want to read it, and undoubtedly they will."

A few days after the July 3 statement, OCR distributed its own interpretation to its regional offices, insisting that the policies established in 1968 continued to be in effect. Districts which had failed to submit acceptable plans or which had been terminated would still "be expected to complete the elimination of the dual system by the fall of 1969 or 1970." For the first time, however, official OCR policy permitted the extension of deadlines beyond 1970. Even OCR's "strict interpretation" acknowledged this new departure: "In those cases where extreme and valid reasons related solely to administrative feasibility make these dates [1969 or 1970] not practicable . . . a limited extension of time will be acceptable . . . ." However, the possibility of approving a post-1970 terminal date theoretically did not suspend the requirement of substantial interim steps.[13]

Politics and the Pace of Desegregation

A recent study of the U. S. Commission on Civil Rights observes: "Since the July 3 statement, there has been a slackening of federal efforts to desegregate . . . schools in the South."[14] The observation is based primarily on an analysis of the administration's role in a series of court cases affecting groups of southern school districts.[15] If the Commission also had examined carefully the desegregation standards reflected in voluntary plans accepted by OCR since January 20, it would have found that the desegregation slowdown began before the July 3 statement.

Like the Johnson administration, the Nixon administration has allowed certain districts to escape with a minimum of progress. That is, select districts have received very special consideration due to what can only be called "political circumstances."

---

[13] Further clouding the intent of the July 3 statement was a published report in the Washington Post quoting Panetta to the effect that Secretary Finch was preparing "a clarifying letter" for distribution to southern school districts. The letter was to assure districts that the existing March, 1968, policies were still in effect and that districts which had already submitted acceptable plans for 1969 or 1970 would be required to meet their commitments. Although, as the report has noted, OCR officials interpreted the July 3 statement in the same light, the clarifying letter from Secretary Finch was never sent. The Washington Post, July 4, 1969, and the New York Times, July 16, 1969.

[14] "Federal Enforcement of School Desegregation," A Report of the United States Commission on Civil Rights, September 11, 1969, p. 51. /Hereafter cited as "Federal Enforcement."7

[15] The Commission examined administration policy in court cases involving districts in Alabama, Mississippi, South Carolina, Georgia, and Louisiana.

Chester County, Tennessee, is a poor county in western Tennessee which George Wallace carried two-to-one over President Nixon last November. Under federal pressures, Chester County had initiated a "freedom-of-choice" plan which had placed 100 (25 per cent) of Chester's black students in desegregated schools by the 1968-69 school year.

In 1967, HEW officials made two trips to the county in an effort to negotiate a plan producing total desegregation. But local officials stood firm against further progress, and the department initiated enforcement proceedings. For two years the district made few changes. Then on February 16, 1969, Secretary Finch announced that he was terminating the county's federal funds in 30 days. Finch's action "shocked" the school board, and on February 24, the school superintendent wrote Senator Howard Baker (R.-Tenn.) requesting one more review.[16]

Several days of negotiations ensued involving a special team of HEW officials, Chester County officials, and the director of Tennessee field operations for Senator Baker.[17] On March 16, the Chester County school board approved a plan that desegregated grades 9-12 in the county's all-black school by transferring the black students to the white high schools. However, under this plan, the first eight grades of the black school remained segregated.

---

[16] The Chester story was reported in an extensive article appearing in the Long Island paper, Newsday, May 7, 1969. Subsequent conversations with OCR officials have confirmed that account.

Veteran HEW officials pointed out that the plan would be a violation of existing standards because (1) the district was not a majority black district (only 14 per cent black), and (2) existing physical facilities could accommodate full desegregation in 1969. Therefore, there were insufficient reasons for granting the district a 1970 terminal date.

Finch extended the 30-day termination date beyond March 16 and met with Senator Baker and the school superintendent on March 19, according to the Nashville Tennessean. "Finch met with Panetta and the three top department guideline experts and asked them to suggest some wrinkle that Chester County might accept to overcome the segregation of grades one through eight."[18] After further discussion, the county finally agreed to send 35-40 white elementary students to the all-black school in 1969 for classes in music and chorus. Total desegregation was promised for 1970.

---

[17] The Nashville Tennessean, March 20, 1969.

[18] Newsday, May 7, 1969.

Panetta claimed the plan was acceptable, but he apparently had very little choice. "To be very frank, I did not like the plan, but it can be defended as being legal," he said. Senator Baker announced Finch's decision to restore funds to Chester County on March 19 -- six days before voters in the adjacent congressional district went to the polls in a special congressional election. According to Panetta, the special election had "some influence" on HEW's normal decision-making process. "Had not Senator Baker indicated a great interest in the case, and had not the Secretary become involved, the chances are that Chester County's funds would be terminated today."[19]

Many HEW professionals remained convinced that Chester County received something other non-majority districts had never received: an extra year to desegregate without a clear need for construction of new facilities. Edwin H. Yourman, HEW's assistant general counsel for education, commented, "As far as I know, there never was a case where there was so much feeling /in the department/ that they already had a usable facility." Another official refers to Chester's plan to build eight new classrooms onto a white school building as "something we can hide behind" in defending the Chester settlement to other school districts.[20]

---

[19] Ibid. Tennessee's third district congressman, Bill Brock, was also involved in the case. William Timmons, a member of the President's Congressional Relations staff in the White House had telephoned Panetta about the case at Brock's request. A White House Congressional Relations aide, Lamar A. Alexander, also called Panetta "two or three times at the request of Baker's office, but only to get information on the status of the case."

The political maneuvering apparently had little of the desired impact on the voters in the special election. The Republican candidate ran third behind the American Independent Party candidate and the Democrat, who won.

A later instance of apparent political intervention involved 21 school districts in South Carolina where the federal district court had asked HEW to submit desegregation plans. Education experts from the Title IV Equal Education Opportunities Program (EEOP)[21] drafted plans which, in accord with current OCR standards, generally required completely unified school systems for the 1969-70 school year. When most of the local districts resisted the proposals, political pressures apparently succeeded in having the plans revised and the EEOP staff overruled through intervention of top HEW and Justice officials. The plans were hastily "modified" so that all but three of the school districts received a September 1970, not September 1969, terminal date.

The proposed new plans for nine of the 21 districts completely violated established standards for requiring substantial interim steps because no additional grades were to be desegregated in 1969-70. Although the other nine 1970 terminal plans required somewhat more substantial interim steps, one OCR official termed them "very charitable."

---

[20] Newsday, May 7, 1969.

[21] The Title IV program was authorized by Title IV of the 1964 Civil Rights Act. The program's purpose is to provide technical assistance and advice to those districts attempting to eliminate dual school systems.

Deviations from established policies due to special political circumstances were certainly not initiated by the present administration. Panetta points out that in July, 1968, the Johnson administration's reaction to a situation involving a Columbus, Mississippi, district was similar to the Finch response vis-a-vis Chester.[22] However, the numerous inadequate plans accepted since January 20 tend to support the contention that the present administration is rather highly susceptible to southern political pressures.

Four days before the opening of the 1969-70 school year, Palm Beach, Florida, had a 1970 plan approved with weak interim steps even though only 27.8 per cent of its 65,700 students are black. Operating a freedom-of-choice system in the 1967-68 school year, Palm Beach had only 17.7 per cent of its black students in desegregated schools. The low rate of desegregation continued despite the fact that the district received in 1965 through 1967, one of the largest Title IV technical assistance grants ever awarded to one district for the purpose of formulating a desegregation plan.

---

[22] Newsday, May 7, 1969.

In the summer of 1968, HEW attempted without success to negotiate a plan to achieve greater desegregation. On August 20, 1968, the district was formally cited for noncompliance. However, Title VI officials continued to negotiate while the enforcement proceedings also progressed. By January, 1969, OCR's charge of noncompliance had been upheld by a hearing examiner and an appeal from the district was pending before the Reviewing Authority. Negotiations continued throughout the school year. Further assistance was provided by experts from the Title IV desegregation center at the University of Miami.

OCR officials were concerned that the district be required to achieve as much desegregation as possible in September, 1969, because adjacent districts were also in the process of negotiating plans. As the opening of the 1969-70 school year approached, Palm Beach faced the possibility of losing $8.4 million in federal aid if an agreement were not reached.[23]

During the week prior to the beginning of school, however, OCR officials finally agreed to accept a desegregation plan proposed by the local county school board. Senator Edward Gurney (R.-Fla.), who had acted as an "intermediary" in the case, announced the settlement on Friday, August 29, soon after OCR offices closed.[24]

---

[23] The Miami Herald, September 30, 1969.

The approved plan was considerably weaker than either of the plans which had been proposed by OCR or the Title IV education experts from the University of Miami. The Title IV program had invested thousands of dollars and several months working out a plan which met the requirements of Title VI. Both the Title VI and the Title IV plans called for 90 per cent desegregation in 1969-70. The plan which was accepted will result in only about 20 per cent desegregation in 1969-70, with promises of more to come in 1970-71.

(Administration critics find one consistent political note in the Tennessee, South Carolina, and Florida cases. In all three, Republican politicians were given the chance to show their constituents that they could deal effectively with a Republican administration to the point of slowing down desegregation in several individual districts.)

In some districts such as Clark County, Georgia, and Fulton County, Georgia, OCR made an effort to stand firm behind reasonably sound plans in the face of strong political pressure to do otherwise. OCR officials working in Fulton County had to contend with the vociferous interventions of Representative Fletcher Thompson who stated his intention to seek the impeachment of Secretary Finch.

---

[24] Ibid. One well-placed official estimates that residents in one section of Palm Beach County contributed over a million dollars to the Nixon campaign.

Fulton County had a student enrollment of over 34,000 students in 1968-69, of which 11 per cent were black. In May, 1969, regional officials referred the case to Washington after negotiations with Fulton officials failed to provide assurances that the district would substantially increase the number of students in desegregated schools in the 1969-70 year. (Only 13 per cent of the students attended desegregated schools in 1968-69.)

During the summer of 1969, OCR officials in the regional and Washington offices, refusing to buckle under pressures from local officials, discussed at least four different plans with Fulton County schoolmen which would desegregate six of nine all-black schools in the county system in 1969. On July 25, the county board voted to close the all-black Eva Thomas High School in College Park and to send the students to three white schools. This action, however, fulfilled only one part of an OCR-approved plan because eight other all-black schools would remain in operation during 1969. Before the final confrontation between OCR and the county board, the case was removed from OCR's jurisdiction as a result of a suit brought by the Atlanta Chapter of the NAACP.

Retreat Without Confrontation

In addition to those cases where absence of firm adherence to established policies can be related to obvious political influences, several inadequate plans have been accepted since January 20 even though direct political intervention was not so readily apparent. These cases are significant because they illustrate how weak voluntary plans can contribute to a general relaxation of desegregation standards and can further delay the achievement of desegregated education. Acceptance of such plans may also suggest a conscious or even unconscious relaxation of standards on the part of OCR administrators as a consequence of nonsupport from top political officials in the administration.

In Gulfport, Mississippi, the student population is 22 per cent black, and no serious construction problems prevented full desegregation in 1969. In the summer of 1968, OCR negotiated a plan permitting the district to continue a freedom-of-choice system which achieved about 30 per cent desegregation in the 1968-69 school year. The 1968 plan also provided for complete desegregation in September, 1969, through the use of a new system of zoning.

In February, 1969, Gulfport reneged on the 1968 plan and requested until 1970 to complete its desegregation program. "Community resistance" was cited as one reason for seeking the delay. Regional OCR officials in Atlanta told the district that such reasons were inadequate and, if accepted, would violate established policies. After fruitless negotiations with the district, the regional office referred the case to Washington with a recommendation that the district be cited for noncompliance.[25]

Additional discussion between local officials and OCR officials in Washington produced a plan which would increase total desegregation from 30 per cent in 1968 to 50 per cent in 1969, and allow a terminal date of 1970.[26]

Acceptance of the revised Gulfport plan represented another departure from strict adherence to the policy of allowing only districts with majority black populations or construction problems to have a 1970 terminal date. When questioned about the Gulfport plan, Washington OCR officials pointed out that the neighboring district in Biloxi continued to operate a freedom-of-choice plan under a court order. Therefore, the officials contended, community political pressures were such as to prevent Gulfport from peacefully and completely desegregating in 1969. If the same reasoning were applied throughout the South, the pace of desegregation would be dictated by the degree of resistance it encountered.

---

[25] The three HEW regional offices serving the South (Atlanta, Charlotte, and New Orleans), are authorized to approve a district's desegregation plan. All plans are not acceptable at the regional level are referred to Washington, usually with a recommendation that the district be cited for noncompliance. The referral action in itself will often encourage the district to negotiate a plan with officials in Washington. If a settlement is not reached, the Washington office may initiate enforcement proceedings.

[26] The effects of Hurricane Camille required no change in Gulfport's basic plan for desegregation.

In Aiken, South Carolina, (Senator Strom Thurmond's district) the district's desegregation plan achieved a 35 per cent level of desegregation in 1968-69. Like Gulfport, the plan was approved in the summer of 1968, and promised virtually complete desegregation in September, 1969. In April, 1969, the district sought to revise its plan. The renegotiated plan, pending acceptance in Washington, is expected to achieve 60-65 per cent desegregation in 1969 and 100 per cent in 1970. However, since Aiken is not a majority black district and does not need new facilities, established policies were compromised by failure to adhere to the 1969 terminal date.

Lancaster, South Carolina, and South Panola, Mississippi, are other districts which have 1970-71 terminal dates, even though neither has a majority black population nor serious construction problems.

More serious deviations from established policies are illustrated by similar voluntary plans accepted from two South Carolina districts -- Berkeley and Orangeburg County district No. 4, and Twiggs County, Georgia. These are districts with majority black student populations. On paper they have good 1970-71 plans, but their interim steps for 1969-70 promised only miniscule increases in desegregation. (In this respect, the interim steps are similar to the steps approved for at least nine of the 21 South Carolina court order districts already discussed.)

For example, In Twiggs, Georgia, 64 per cent of the student population is black. Under freedom-of-choice plans, the extent of desegregation remained the same in 1967-68 and 1968-69 -- about 4.5 per cent for both years. The plan accepted from Twiggs in April, 1969, promised 100 per cent desegregation in the 1970-71 year, but no additional desegregation over the 4.5 per cent was anticipated in 1969-70. Interim steps include joint meetings of clubs and organizations between black and white schools, exchange of classes in civic and world history, and cooperation between high school newspaper staffs.

Although these steps may offer some degree of progress, the Twiggs plan represented a clear departure from established policies of requiring as much desegregation as is administratively possible. If a district has not increased the percentage of students in desegregated schools in two years, one may reasonably doubt that without more federal pressure, the district will move from 4.5 per cent to 100 per cent desegregation in September, 1970.[27]

On the basis of available data,[28] it would be irresponsible to assert that a majority of the 106 voluntary plans accepted in 1969 have been substandard in terms of OCR's own criteria. But the cases which have been reviewed indicate varying degrees of weakness in interim steps and do bring into question the "effectiveness" of all the plans accepted. The known substandard voluntary plans accepted in 1969 in addition to the approximately 100 court-order plans accepting minimal desegregation in September, 1969, have made a major contribution to the general slowing down of the desegregation effort.

---

[27] According to HEW reports, Twiggs failed to implement even these minimal steps in September, 1969.

[28] See "Federal Enforcement" and the statement by Jack Greenberg, Director-Counsel, NAACP Legal Defense and Education Fund, Inc., New York City, September 9, 1969. /Hereafter cited as LDF statement./ The former report, however, does not evaluate any voluntary plans. The two additional districts listed in the LDF statement are Salisbury, North Carolina, and York No. 2 (Clover), South Carolina.

The administration also has ignored at least 80 school districts with majority black populations, permitting continued segregation.[29] The failure to enforce the law in these districts dates back to the Johnson administration. But the status quo forces grew more intransigent through continued delayed inaction.

The administration's policies have been terribly inconsistent. Abandonment of uniform standards for desegregating districts even before July 3, and rejection of a "single arbitrary date" by which desegregation must be achieved, have contributed to frequent discrepancies among the steps taken by individual districts. This in turn places increased local pressure on school officials to proceed according to the lowest common denominator of desegregation and aggravates the problem of monitoring the plans. In the absence of clear standards, "bona fide educational and administrative problems" threatened to become excuses for perpetuating educational discrimination and social injustice until well into the 1970's.

---

[29] LDF statement, p. 2.

The Whitten Amendments

Another clue as to the administration's attitude on Title VI enforcement was its initial failure to oppose the Whitten amendments in the House. As in 1968, Representative Jamie Whitten (D.-Miss.) offered amendments to the House HEW-Labor appropriations bill which would seriously curtail the federal government's efforts to bring about desegregation through withholding of federal funds. Pro-civil rights Republicans requested help from Secretary Finch's office in fighting the restrictions. According to one newspaper source, "They were assured aid would be forthcoming -- a public statement to be issued by Finch." During House debate, however, the statement never materialized, due apparently to opposition from the Attorney General's office.[30] As the Washington Post observed on the day before the House vote, " . . . to let the . . . amendments go by without opposition /from Republican leaders/ would provide a very clear signal to the South and further undermine the efforts of Mr. Nixon's appointees at HEW."[31] Subsequently, in a press announcement on September 11, Finch expressed his opposition to the amendments. In testimony before the Senate Appropriations Committee, he formally voiced his department's opposition to the legislation.[32]

---

[30] The Atlanta Constitution, September 12, 1969.

Delays Inherent in the Administrative Process

Thus far, we have dealt with federal actions that have compromised the administrative enforcement process. But the sad fact is, civil rights advocates point out, the process itself allows for serious and often crippling delays.

Over 50 districts were listed as being at the first stage of the process for the week ending November 20, 1969.[33] That is, they had received notice of HEW's intention to initiate formal enforcement proceedings and defer the district's federal funds. In two cases, the notice was filed three years ago (November 25, 1966, for Richardson, Texas, and December 12, 1966, for Americus, Georgia) and no additional enforcement steps have been taken. In the remaining 19 cases, notices were filed on or before August 25, 1969. [34]

---

[31] Even though the House passed the amendments, civil rights forces did not place all responsibility for passage on the Republicans because at least 50 voted against the amendments. "And one of the things that undermined the best efforts of the valiant opponents of the Whitten riders was the conspicuous absence from the floor of many liberal Democrats." (Quoted from the Leadership Conference on Civil Rights Memo, No. 12-69, August 11, 1969, p. 2.)

[32] Marquis Childs has suggested that "Finch is a kind of St. Sebastian, set up to take the arrows of attack with the patient smile of martydom." (The Washington Post, September 17, 1969.)

[33] Department of HEW, Status of Title VI Compliance, Interagency Report, weekly cumulative listing, November 20, 1969.

The second stage in the enforcement process is a hearing before a federal examiner who determines if the school district is in violation of the law as claimed by HEW. HEW's November 20 status report listed three districts for which a hearing had been conducted in 1968, but no decision had been rendered. Several other hearings had been completed prior to August, 1969, but again, no decision had been rendered.

---

[34] After a district has been cited for noncompliance, it frequently will agree to desegregate while the enforcement proceedings are in progress. Subsequently, OCR often will suspend the proceedings at whatever stage of enforcement has been reached and lift the deferral of federal funds, but refuse to drop the proceedings. The district continues to be listed as under enforcement but in reality, no penalties are imposed or other action taken at that time. This procedure eliminates the necessity for starting enforcement proceedings from the beginning, should the district break its agreement and renege on its plan. One may assume that after a reasonable period of time, the proceedings either should be dropped because the district desegregated, or be continued because the district failed to desegregate. Otherwise, "enforcement" becomes meaningless.

Americus, Georgia, is one of the districts where deferral of funds has been lifted, although officially the district has been under "formal enforcement procedures" for three years. In the Richardson, Texas, case, HEW apparently cited the district three years ago, deferred funds, and has taken no action since.

The decision by the hearing examiner is final unless appealed to a five-man Review Authority, appointed by the Secretary of HEW. If the district is found to be in non-compliance and no appeal is made, the case goes directly to the Secretary for his signature ordering termination of funds. Two years ago, hearing examiners found two districts to be violating the law. A decision was rendered against Bowman School District No. 2 in South Carolina on December 11, 1967, and against Hart County, Georgia, on January 19, 1968. By November, 1969, no appeal had been made to the Authority, and no fund terminations had been ordered by the Secretary.

A more common delay in the enforcement process has occurred when cases are appealed to the Review Authority. Twenty-six cases were pending before the Authority on November 20. The average time lapse since the hearing examiner's decision was six months. Elbert County, Georgia, has been pending since December, 1968, and Palm Beach, Florida, since January, 1969.[35]

Another case pending before the Authority at present involves Richlands No. 1 school district in Columbia, South Carolina. Early in 1969, the local hearing examiner overruled OCR objections to a desegregation plan submitted by the Columbia city school board. OCR believed the plan to be very inadequate and appealed the ruling to the review panel. Although the appeal has been pending since May 1, 1969, a decision had not been reached as of November 26. Thus, due in part to the inefficiency of the administrative review process, the district has already started another school year, still receiving money under a plan OCR considers to be in violation of the law.

---

[35] HEW accepted a "weak" desegregation plan from Palm Beach in August, 1969. Like Americus, Georgia, both Elbert and Palm Beach are receiving federal funds. "Formal enforcement proceedings" have not been dismissed, however, pending the districts' progress toward desegregation in 1969-70.

When the Authority does make a decision, the Secretary may then exercise his responsibility and terminate the funds. On November 20, 13 districts were listed as violators of the law as determined by decisions by the Authority. Decisions in eight of the cases had been rendered in June, 1969, or before, but the Secretary had taken no action.

HEW's response to a recent ruling by the U. S. Court of Appeals for the Fifth Circuit added further unnecessary delay to the process described above. On August 12, 1969, the court decided against the government in a case involving termination of funds in Taylor County, Florida. The court rejected HEW's practice of assuming blanket discrimination in all federally-aided programs on the basis of faculty or student segregation. HEW was ordered to make separate findings of discrimination for each of the 23 different aid programs the district had received.

On September 17, HEW requested that 39 cases using pre-Taylor administrative procedures be returned to federal hearing examiners for review according to the Taylor guidelines. Reconsideration of these cases probably will not result in a reversal of earlier discrimination findings. However, the administrative enforcement proceedings were expected to be delayed for several months while the hearing examiners conducted their review.

Given the fact that the appellate court rendered its decision on August 12, HEW contributed to delay by waiting until September 17 to return the 39 cases to the hearing examiners.[36]

HEW can take steps to mitigate the inefficiencies of the administrative enforcement process. For example, the Secretary has the administrative authority to enlarge, eliminate, or otherwise alter the Review Authority to make it a more efficient body.[37] Decisions of hearing examiners which are appealed should be adjudicated by the Authority immediately after the hearing. Delays of a month, much less six months, are inexcusable.

Unless HEW acts to expedite the process, administrative red tape and political expediency will continue to prevent efficient policy implementation.

---

[36] Delay was further abetted for 90 days while HEW and Justice debated whether to appeal the decision to the Supreme Court. No appeal was made.

[37] On June 26, 1969, Secretary Finch appointed four new members to the Department's five-member Civil Rights Review Authority, but two of the four were generally regarded by HEW staffers as likely to be sympathetic to appealing districts. See the Atlanta Constitution, July 26, 1969.

PART II

CLIMAX IN MISSISSIPPI

The Administration Rebuked

The most far-reaching administration decision reflecting the influence of those opposed to quick and effective desegregation involved school districts in Mississippi. On July 3, 1969, 30 Mississippi school districts were ordered by the U. S. Court of Appeals for the Fifth Circuit to take whatever steps were necessary to desegregate their schools completely by September, 1969. This order was in accord with the May, 1968, Supreme Court ruling involving New Kent County, Virginia, that freedom-of-choice desegregation plans were legally inadequate unless they resulted in the elimination of dual school systems.[38]

Acting on the Circuit Court's order, technical assistance teams from the Office of Education's Title IV program collaborated with local community officials to develop desegregation plans which were filed with the federal district court on August 11. However, on August 20, Secretary Finch sent a letter to the group of federal judges who were to hear arguments on the plans requesting that the district court delay the hearing until December 1 so HEW could file other plans. In his letter, Finch explained that his department had lacked sufficient time to draft the plans and that chaos would ensue if the plans were put into effect when school opened on August 25.[39]

---

[38] Green, et al. v. County School Board of New Kent County, Virginia, et al., U. S. Supreme Court, No. 695, May 27, 1968.

The NAACP Legal Defense and Educational Fund immediately filed a motion (which was denied) asking the court to change the federal government from a fellow plaintiff to a defendant along with the Mississippi segregationists. "The U. S. government," said attorney Melvyn Leventhal, "for the first time has demonstrated that it no longer seeks to represent the rights of Negro children."[40] The government's request for a delay was granted by a two-judge federal panel, and upheld by the U. S. Fifth Circuit Court of Appeals. The Legal Defense Fund then took its appeal to U. S. Supreme Court Justice Hugo Black. Black reluctantly upheld the Circuit Court, but at the same time denounced school desegregation delays and suggested that the full court hear the case. The high court agreed to do so. In pleading its case, the Legal Defense Fund asked the court to strike down the "all deliberate speed" clause in the 1954 Brown decision.

---

[39] Finch's letter stated, " . . . the administrative and logistical difficulties which must be encountered in the terribly short space of time remaining, must surely, in my judgment, produce chaos, confusion, and a catastrophic educational setback to the children in the school districts." The Washington Post, August 25, 1969.

Opposition lawyers for the Mississippi school boards had advance knowledge that the delay would be requested. Justice Department's lawyers who were in Mississippi to argue the case were not informed. The Atlanta Constitution, September 9, 1969.

[40] The Atlanta Constitution, August 26, 1969.

On October 29, in what was generally seen as a landmark decision comparable to the Brown ruling 15 years earlier, the Supreme Court unanimously reversed the Fifth Circuit decision.[41] The Mississippi cases were remanded to the Circuit Court, and the latter was instructed to order immediate desegregation in all of the school districts, accepting all or any part of the plans submitted to the court by Title IV officials on August 11. The Fifth Circuit ordered 27 of the districts to implement the Title IV plans and to begin operating racially integrated schools by December 31, 1970. Because of serious transitional problems, three of the districts also were allowed to follow the Title IV plans which provided for partial desegregation in January, 1970, and full desegregation by September, 1970. The decision was accepted by all parties concerned.

In addition to precipitating the crucial action by the Supreme Court, the administration's action in Mississippi had earlier produced an organized protest of attorneys in the Justice Department's civil rights division. Unhappy over the administration's July 3 statement on school policies and its proposed modification of the Voting Rights Act plus the Mississippi decision, 90 per cent of the division's staff attorneys held a series of meetings to determine what, if anything, should be done to prevent "the whole civil rights drive from going down the drain."[42] At almost the same time, a group of black summer interns sent Mitchell a memo charging the department with "timidity on civil rights."[43]

---

[41] Beatrice Alexander, et al., v. Holmes County Board of Education.

The dispute within the civil rights division embarrassed the administration. By October 16, two leaders of the protest had been forced to leave their jobs. Gary Greenberg, a Harvard Law School graduate, was given two-and-a-half hours to clear out his desk after he told Leonard that he could not defend the administration's position in the Mississippi cases.

The other expelled leader was Joe Nixon, an Alabamian and five-year veteran of the civil rights division. Nixon charged that Leonard saw his " . . . higher obligation as servant to John Mitchell, rather than to enforcement of the law." The attorney also described Leonard as being " . . . very susceptible to the sophisticated southern defenses about needing more time and having administrative problems or needing to prepare the community for change."[44]

---

[42] Newsweek, September 8, 1969.

[43] Ibid.

Another less publicized event related to the Mississippi incident was the voluntary transfer of three top officials from the EEOP. Within a few weeks of the administration's request for delay in August, Dr. Greg Anrig, director of the EEOP; Mr. Frank B. McGettrick, deputy director; and Mr. Richard Fairley, head of the southeastern region of EEOP, were reassigned at their own request to other duties within the Office of Education. Anrig and his associates have been consistent advocates of firm desegregation policies. The EEOP plays a crucial role in the overall desegregation effort, particularly in the hundreds of districts under court order, including those in Louisiana and Mississippi. The loss of three experienced professionals strongly committed to ending segregated school systems further weakened desegregation efforts. The transfers also gave additional evidence of dissatisfaction among federal officials with the political game the administration was playing with school desegregation.[45]

A close examination of the circumstances surrounding the Mississippi cases makes reasonably clear the administration's untenable position before the court. Although Finch had discussed the Mississippi situation with OCR officials several days prior to the formal request for delay, neither Panetta, the director of OCR, nor James Allen, the liberal Commissioner of Education, were ever contacted about the specific decision to seek postponement of the plans. Furthermore, once the decision was made, neither the director of the Title IV program nor the branch chief of the southeastern region for Title IV appeared in court to testify in favor of the decision to seek delay.[46] In other words, the decision apparently was opposed by the HEW top civil rights and educational officials most familiar with the situation in Mississippi. The plans which were submitted to the court on August 11 were prepared by trained educators who had visited each of the school districts at least three times while the plans were being drawn.

---

[44] The Washington Post, October 16, 1969.

[45] The Washington Post, September 23, 1969.

One little-reported aspect of the case is that although the proposed plans called for immediate desegregation in all but three of the districts, the plan also suggested interim steps which could be taken during the 1969-70 school year to accomplish partial desegregation. Title IV personnel were well aware of the difficult problems facing some of the districts. If the district court had decided to defer complete desegregation because, for example, of impending chaos, interim steps were already outlined by the Title VI plans. Apparently the Secretary, or whoever made the decision to request a delay,[47] found even these steps to be too "catastrophic" for the local communities.

---

[46] At least seven other Title IV staff members refused to recant their findings that immediate desegregation was feasible. The Washington Post, September 23, 1969.

A survey of the proposed plans reveals that 16 of the 30 districts had five schools or less and three districts had only two schools. The decision to request delay in all 30 districts completely disregarded varying local circumstances and the possibility that some districts might have gone ahead with the suggested plans.[48]

Another alternative to delaying desegregation until December 1, and thus until 1970-71, would have been to request a few weeks delay in the opening of school to give the local officials more time to prepare. There is nothing sacrosanct about the date when a school has to open. Such delays have been ordered in the past to facilitate desegregation plans.

---

[47] Well-placed federal officials suggest that the initiative for the decision came from the Attorney General's office and that Finch was brought into the picture as an "education expert" to help mute criticism of the Justice Department and White House politicians. Reports indicate that pressure by Senator John Stennis (D.-Miss.) and the rest of the Mississippi delegation encouraged a reevaluation of the plans. The Washington Post, August 25, 1969.

According to a report in the New York Times, September 19, 1969, Stennis wrote the President, threatening to abandon his crucial leadership role in the ABM fight unless desegregation was slowed. The White House denied having received the letter.

[48] See "Federal Enforcement," p. 55, for further comment.

With respect to improving the quality of education for all children in the districts in question, administration critics point out that the case for delay had little merit. If the white community was intent on preventing complete and orderly implementation of the desegregation plans, a three-month's delay seemed only to give opposition more time to solidify.

According to some of the federal officials who worked on the plans, at least half of the Mississippi school superintendents revealed in private conversation that their jobs were less difficult when the government was firm in demanding complete desegregation.

In many segregated communities in the Deep South, few whites will admit publicly that they will send their children to school with blacks. "People say a lot of things," one Mississippi attorney and advisor to the Leake County Board of Supervisors told Time magazine, "but when it gets right down to it, they don't always do what they say they're going to do."[49]

The Administration's Reaction

The Supreme Court landmark decision in the *Alexander v. Holmes* case gave HEW and the Department of Justice a new opportunity to initiate firm and consistent enforcement actions against districts which have refused to desegregate their schools. HEW took advantage of the opportunity and announced on November 16 that it planned to take affirmative action immediately affecting 112 school districts:

---

[49] *Time*, September 19, 1969, p. 21. Leake County was selected for analysis by *Time* as a district typical of those granted a reprieve.

1) Forty-six districts which had been "negotiating" with HEW over what constituted an "acceptable" plan for their schools were given 30 days to formulate plans for desegregating their schools by December 31, 1969. Failure to comply will result in the districts being cited for noncompliance -- the first step in administrative enforcement leading to final terminations.

2) Thirty-one districts which have used long, drawn-out court battles to delay being placed under a final court order must submit to HEW a court-approved plan requiring desegregation by December 31 or face administrative enforcement.

3) Thirty-five districts which submitted acceptable plans but failed to implement them in September will be cited immediately or referred to the Department of Justice in those cases where Justice is certain it can move quickly to file a lawsuit forcing desegregation. According to Paul Rilling, director of OCR's regional office in Atlanta, this administrative action against reneging districts does apply to all such districts in Georgia which have not been sued by the Justice Department. Prior to the policies announced on November 16, the government had taken no action

against approximately 16 reneging districts in Georgia.

4) HEW also announced on November 16 that it would urge the 97 segregated school systems which have lost their federal funds to submit an acceptable plan by December 31 and thereby regain their money. Otherwise, the districts face the possibility of a lawsuit.

Civil rights advocates may applaud the fact that HEW now plans to move more aggressively to bring certain recalcitrant districts into compliance. At the same time, the fact that action has to be taken in so many districts is an indication of the weakness and inconsistency of previous policies. For instance, one may question why HEW was even negotiating with 46 districts after the school year began without having cited the districts for noncompliance. That is, if a district has not agreed to comply with Title VI and desegregate its schools by September, 1969, a firm enforcement policy would dictate immediate initiation of enforcement procedures before additional negotiations were held.

A large majority of the 46 districts are those with majority black populations. No significant action had been taken in these cases since the Civil Rights Act was passed in 1964. The negotiations that had taken place were of a "technical" nature involving no substantive discussion. Now steps apparently will be taken to desegregate some of the 80 districts with majority black populations. (About 21 of the districts are located in Georgia where they will not be affected by new administrative actions.)

Another weakness of past policies is illustrated by the delayed action against the 31 districts involved in litigation. HEW since 1964 has had the legal authority to initiate enforcement procedures in any litigated district not under a final court order. But in the past the authority had been used only sporadically and with little positive benefits.

The policies announced on November 16, however, do commit HEW to take new positive steps to speed school desegregation as the court has ordered. This affirmative action, apparently taken despite the absence of directives from the White House, constitutes a significant effort to reverse the tide of evasive and apathetic desegregation enforcement fostered by the administration since January. The success of the effort now depends on successful implementation of the announced policies. OCR's initiative is in contrast to the failure of the Justice Department to initiate litigation implementing the court's ruling in many districts where Justice previously had initiated desegregation suits.

Despite this indication of a more vigorous enforcement program on the part of HEW, many civil rights advocates feel that the court's decision permitted, or even required, HEW to take additional steps.

For example, for the first time in three months, OCR plans to initiate enforcement proceedings against Georgia school districts which reneged on their plans in September, 1969. However, in lieu of the desegregation suit which Justice filed against the state of Georgia in August, OCR still plans to make no effort to negotiate voluntary plans with the remaining segregated Georgia districts, or to move against districts which have failed to submit plans. This means that after five years of neglect, at least 21 majority black districts will continue to be unaffected by HEW's administrative inducements to desegregate. Although the Justice Department has taken the legal action to secure statewide desegregation by 1970-71, civil rights advocates feel that the possibility of court-ordered desegregation sometime in the future is a poor excuse for excluding potentially effective administrative action to secure desegregated education immediately.

The most questionable aspect of HEW's post-Alexander policies is the department's refusal to speed the desegregation process in any of the 120 districts operating under HEW-approved 1970-71 terminal plans.

According to Paul Rilling, the policy toward the 1970 plans is based on the fact that while HEW has an obligation to implement the Supreme Court's decision, it also has an obligation to those school officials who submitted voluntary desegregation plans in good faith under ground rules prevailing before October 29. Rilling points out that the Fifth Circuit Court of Appeals approved 1970 terminal plans with substantial interim steps in 1969-70 for three of the Mississippi districts affected by the Alexander decision. The Legal Defense Fund did not appeal these cases.[50] OCR has decided, therefore, that it would be unfair to those who entered into "good faith agreements" on 1970 plans to reopen the cases at this time. OCR does plan to review the plans to see that the 1969-70 interim steps are carried out.

Rilling indicated that OCR's regional branches still could recommend that a 1970 terminal date be approved for districts submitting a voluntary plan if the district's reasons for requesting the extra time met the criteria which the Fifth Circuit Court of Appeals established for the three Mississippi districts. The final decision on such a recommendation, however, would be the responsibility of the director of OCR.

Civil rights advocates have raised two major objections to OCR's decision to simply audit the implementation of the 1970 plans:

A. The basic guideline concerning the timing of desegregation prior to October 29 was the Supreme Court's "all deliberate speed" doctrine which since 1954 has permitted great flexibility in setting deadlines for ending segregated education. Now the high court has ruled that "all deliberate speed" is "no longer constitutionally permissible." The new obligation is "to terminate dual school systems at once . . . ."

---

[50] Charles Morgan, director of the American Civil Liberties Union's southern regional office in Atlanta, has suggested that the Supreme Court's mandate required all 30 districts to desegregate by December 31, and that the Fifth Circuit erred in approving the delay for three of the districts.

The primary responsibility of OCR in the field of education is to bring about desegregated schools. OCR personnel and local school officials are mutually bound by the court's new directive. Districts entering into so-called "good faith agreements" to desegregate in 1970-71 under the old ground rules should be required to revise their plans to comply with the new standards. In terms of both fairness and faithful implementation of the court's decision, all voluntary plan districts should implement plans which are in accord with the newly defined constitutional standards.

B. In implementing the Supreme Court's decision in Alexander v. Holmes, the Fifth Circuit Court of Appeals reversed its position prior to the decision and ordered 27 Mississippi districts to desegregate completely by December 31, 1969. Three districts were granted 1970 terminal dates because of the serious problems relating to the size of the districts (two had over 10,000 students), the large number of all-black schools involved, and the incomplete construction of new schools. All of the districts were required to take substantial interim steps in the 1969-1970 year. These steps will result in an immediate increase in student and faculty desegregation.

HEW has stated that it will review its 1970 plans "to assure that substantial 1969 interim steps were fully implemented."[51] But this position avoids a difficult, but very important, issue by assuming that all of the HEW-approved 1970 plans do in fact include "substantial interim steps." As the 1970 voluntary plans reviewed in this report illustrate, HEW has accepted 1970 plans with a great variety of interim steps which evidence a complete lack of consistent standards.

Plans similar to and including those for Twiggs, Georgia, and Berkeley, South Carolina, do not anticipate any increase in the number of students in desegregated schools in 1969-70. Districts like Palm Beach, Florida, succeeded in getting plans approved which require only a minimal increase in desegregation during 1969-70.[52]

In view of this mixed-bag of 1970 plans and interim steps which HEW accepted prior to the landmark October 29 decision, civil rights advocates feel that HEW should do more than review the plans to see that they are implemented. HEW has an obligation to review, and where appropriate (one feels this would be in many cases), revise the plans so that they comply with the court's mandate of immediate desegregation, or at least meet the criteria for interim steps set by the Fifth Circuit in applying the Alexander decision to the 30 Mississippi districts. (See pages 65-67 for comment on the Fifth Circuit's order of December 1 approving fall, 1970, deadlines for complete desegregation in 13 other southern school cases.)

---

[51] HEW press release, November 16, 1969, p. 3.

[52] The reader will remember that the plan finally accepted by OCR for Palm Beach was expected to increase desegregation in 1969-70 from 17 per cent to 20 per cent, whereas OCR had originally advocated a plan to achieve 90 per cent desegregation in 1969-70.

Some observers point out that unlike the Legal Defense Fund, the Justice Department has not initiated new actions in those cases involving court-approved 1970 plans. Failure of Justice to act, especially in cases such as those involving the 21 South Carolina districts where virtually no increased desegregation has been ordered by the courts for 1969-70, also restricts action by HEW since the latter has always acted in "close coordination" with the Department of Justice. But HEW is under no legal obligation to follow Justice. From a legal perspective, HEW in fact is free to renegotiate the 1970 plans at any time. Some legal authorities feel that OCR is obligated to reopen cases. Jack Greenberg, director-counsel of the Legal Defense Fund, has indicated that court action may be taken to force a faster rate of desegregation in districts with HEW-approved 1970 plans.

To reopen the 1970 plans would increase the political and administrative problems involved. But these problems are not insurmountable. OCR still has a unique opportunity to bring every school district following a voluntary plan under one consistent standard of immediate desegregation.

PART III

RESPONSE IN LOCAL DISTRICTS

A crucial factor influencing the progress of desegregation is the attitude of local community leaders, particularly their understanding of what action the federal government will require. There is substantial evidence to suggest that the administration's vacillation has strengthened local defiance of the law. The number of districts reneging on commitments to desegregate since January 20, for instance, probably is one indication that local districts perceived a weakening of federal enforcement.

In the six southern states[53] under the jurisdiction of OCR's regional office in Atlanta, 145 districts were operating under approved terminal desegregation plans by September, 1969. The performance of these districts has been verified by OCR. Eighty-three districts completely implemented their plans. Fifteen districts still under negotiation had achieved "substantial implementation" of their plans. Forty-seven (or 33 per cent) of the 145 districts had reneged. In the 1968-69 school year, only seven (or seven per cent) of the 97 districts in the region operating under approved terminal plans reneged.[54]

---

[53] Alabama, Florida, Georgia, Mississippi, Tennessee, and South Carolina.

According to HEW, "It is important to note that each year, HEW is dealing with a larger percentage of difficult school districts; the districts with the fewest obstacles had earlier submitted voluntary plans."[55] One could reasonably expect that some of the 227 districts throughout the South promising complete desegregation in 1969 would refuse to fulfill their commitments regardless of administration policy. Nevertheless, the number of reneges this year in Region IV, and probably throughout the South,[56] is significantly larger than last year.

Regional OCR officials in Atlanta estimate that maybe one-fourth of the districts which failed to implement their plans faced "unavoidable problems" and would have failed under any circumstances. The other districts may or may not have sought delays had the administration taken a more straightforward approach to enforcing the law. But civil rights groups believe there is little reason to assume that administration attitudes and ambivalence encouraged any district to implement its plan.

---

[54] Data provided by Paul Rilling, director of OCR's regional office in Atlanta, November 26, 1969. Data from Alabama are not included because that state is under a court order.

[55] Progress Report on Civil Rights, September, 1969, Department of HEW, Office of the Secretary, p. 3. See Gary Orfield, Reconstruction of Southern Education (New York: John Wiley and Sons, 1969), p. 336, for discussion of past administrative strategy in moving against segregated districts.

[56] The Wall Street Journal reports that in "dozens of districts" officials are either dragging their heels or flatly refusing to carry out integration orders. "Scores more still are using freedom-of-choice plans" which don't eliminate the dual school system. (September 24, 1969.)

Several known instances of local delay were directly related to government policies.

In the summer of 1969, one Tennessee district requesting a postponement of its desegregation plan stated in its letter to OCR that the " . . . uncertainty of the new administration . . . is very confusing in regards to desegregation requirements." The district also complained that neighboring districts under court order were proceeding at a slower pace which caused " . . . our school patrons to suspect our school board of going overboard."

Federal school officials report that in June, several school boards in Louisiana were close to agreement with OCR on desegregation plans. But the administration's July 3 statement, " . . . with its half-promises of more time, froze the school boards in their tracks."[57]

After delaying school desegregation for years, the school board in Austin, Texas, reached an agreement on a plan in late spring of 1969. On June 24, however, the board notified HEW that reports indicated an impending "major change" in the guidelines and that the board would "stand pat" until the change was announced and then "reappraise its plans." HEW officials were thus prevented from using the Austin model which they " . . . had hoped would pave the way for a desegregation breakthrough in Texas, starting with San Antonio and Lubbock."[58]

---

[57] The Washington Post, July 27, 1969.

In South Carolina, the policy announcement "produced rank confusion for school administrators." Local pressure to preserve segregated systems was intensified after prominent southern newspapers proclaimed "School Deadlines Dropped" and "Nixon Keeps His Word." Until the Nixon administration escalated the political aspects of school desegregation, an aide to the South Carolina state superintendent noted great progress. "Attitudes are changing much more rapidly than we had anticipated three years ago, or even two years ago."[59]

One day's events in Columbia, South Carolina, affords another example of how the current administration has helped to create circumstances which impede the desegregation process. On June 30 -- three days before the Finch-Mitchell statement -- OCR personnel traveled to Columbia to meet with a school board that had withdrawn earlier desegregation plans. Upon arrival, the OCR group was met by Columbia school officials waving copies of a local newspaper which reported that HEW would drop all deadlines within a matter of days. The paper even printed a copy of the anticipated impending announcement. Therefore, the local officials could see no reason for going ahead with desegregation plans. The reasoning was facilitated by the attitude of the local politicians who firmly believed that the new administration would relax desegregation standards.[60]

---

[58] The Washington Post, July 27, 1969. Austin was cited by OCR for noncompliance on July 3, 1969.

[59] Quoted in Gary Orfield, "The Politics of Resegregation," Saturday Review, September 20, 1969, p. 60.

An atmosphere of defiance was also encouraged by the administration's earlier decision to postpone from 1969 to 1970 complete desegregation in 21 South Carolina districts under court order, the administration's initial _de facto_ support of the Whitten Amendment, and the decision of the local hearing examiner to accept the desegregation plan for Columbia over objections from OCR.[61]

---

[60] Even though the Finch-Mitchell statement did not eliminate the deadlines as the Columbia paper anticipated, the statement and subsequent actions of the Secretary and Attorney General did little to dampen expectations that extensions will be granted and exceptions will be made if enough political pressure is applied.

[61] OCR appealed the decision five months ago. See above, pp. 28-29. In almost all cases involving South Carolina districts, staff representatives of that state's congressional delegation are present for negotiations between local officials and OCR personnel in Washington. The mere presence of staff from congressional offices would seem to invite political intimidation.

In Coffee County, Georgia, the county school system has about 5,800 pupils, with 30 per cent black. By May, 1969, eight of 12 schools had desegregated, and the board had adopted a plan increasing desegregation in September, 1969. In August, the board decided not to carry out the plan. When a court order required the county to go ahead with further integration, the white community organized a boycott which kept almost half the white students out of school.

Mr. Van Davis, school superintendent in Coffee County since 1962, finally decided to resign, effective January 1, 1970. He blames the Nixon administration for failing to do anything to help his county complete desegregation.

"We do not feel . . . that President Nixon is making any kind of statement at all that helps anybody on this. Now, in his campaign, he led the southern people to believe that something could be eased up on it . . . now, he says they're going to abide by the law. Well, its difficult to tell what is the law."[62]

All responsibility for local resistance to the law cannot be placed on the present administration. Local residents in many segregated districts have always fought back when HEW officials attempted to persuade them to obey the law. But in previous administrations, administrators could generally act with greater confidence that political power in Washington would be used to back them up when policy standards were upheld.

---

[62] Quotations from the Atlanta Constitution, October 11, 1969.

"There's greater confusion in the districts this year than ever before," claimed one veteran OCR official in early September. "The only thing the administration has done to assist our efforts was to write the first sentence in the July 3 statement."[63]

School boycotts occurred in Louisiana, Alabama, Mississippi, and Virginia, as white parents in some cities organized opposition against school desegregation. In Mobile, Alabama, 18,000 white students stayed out of classes on September 24 in a one-day protest demonstration sponsored by the "Citizens for Freedom of Choice." Former Alabama Governor George Wallace, in a widely publicized statement on September 2, 1969, had encouraged white protest throughout the state of Alabama.

Such hard-core resistance attitudes were nothing new in the South, but there was abundant evidence that many white educators were tired of such tactics. Alabama educators did not rush to support their former governor. A Birmingham News article noted that "Educators said large numbers heeding the one-time presidential candidate would mean 'unsurmountable' problems for schools.'" Avoiding direct criticism of Mr. Wallace, another educator expressed himself this way: "Time is of the essence in education, and if you lose it you don't regain it. I think parents here are concerned about getting everything settled and getting their kids an education, and they don't want any trouble at the schools."

---

[63] That sentence reads: "This administration is unequivocally commited to the goal of finally ending racial discrimination in schools, steadily and speedily . . . ."

In many districts, the 1969-70 school year brought widespread resistance to local desegregation plans, not only from the white community, but from the black community as well. In scores of districts where steps have been taken to eliminate dual school systems, white boards of education invariably choose to close all-black schools and send the black students to "white" schools rather than send white students to the "Negro" schools. In some cases, the decision to close black schools is probably the best decision in terms of "sound educational principles" because years of segregation often resulted in the construction and maintenance of inferior facilities for black children. However, in other districts, the black facilities are equal to facilities built for white students, and the black community has resisted the closing of these formerly all-black facilities.[64]

---

[64] Demonstrations against closing all-black schools took place in Charlotte, North Carolina, and Florence, South Carolina, and Fulton County, Georgia.

White and black boycotts, it should be noted, had some of the same superficial likenesses. Both opposed either federal court rulings or administrative enforcement -- however, the most significant difference was that black protests in part stemmed from federal failure to adhere to the law of the land, as embodied in the Brown decision and Title VI of the Civil Rights Act. White opposition, as it had been since 1954, was essentially in defiance of the law.

The problem of insuring that desegregation is a two-way street -- that is, of insuring that former all-black schools with adequate physical facilities continue to be used on an integrated basis -- has not yet been solved. OCR officials claim to have no administrative or legal authority to reject a desegregation plan that eliminates the dual system, even though black schools with good facilities may be closed. Many civil rights advocates, including the present director of OCR, believe that closing adequate all-black schools to achieve compliance with desegregation guidelines is a form of discrimination and therefore, unconstitutional. Until the courts rule that such closings are unconstitutional, however, Panetta feels OCR will have to continue to accept them as part of otherwise constitutional plans.[65]

---

[65] The Atlanta Journal, September 13, 1969.

In the meantime, the power to insure that adequate black schools are kept open on a desegregated basis must come in part from an organized and alert black community. But the federal government can ensure that viewpoints from members of the black community are incorporated into the negotiations over desegregation plans. HEW officials say they are legally obligated to negotiate with the local school boards even though blacks are excluded. However, HEW officials can consult with black representatives at least on an informal basis. Every effort should be made to abolish dual school systems without destroying adequate black facilities or firing black administrators.

The increase in public school desegregation since 1964 has produced a related increase in the number of private schools. The Supreme Court's recent decision presented the prospect of real desegregation to many people for the first time, and private schools found new adherents. An attempt to make private schools work seemed inevitable regardless of how long school desegregation was delayed. One federal official at HEW observed that most people turning to private schools as an escape from integrated education would have done so even if the desegregation process were extended over ten more years.

Many southern educators were concerned that the exodus of white children to private schools would mean less support for public school systems. Founded on the basis of an antidemocratic ideology -- an ideology fundamentally antagonistic toward ideas of human equality and brotherhood -- the new schools threatened to perpetuate racist attitudes and practices. The schools presented immediate obstacles to the success of integrated education in some districts. The future consequences are unclear. But financial and legal problems make very difficult the ability of the private schools to provide a viable, long-run alternative to public education.[66]

A. J. Duckworth, executive secretary of the Mississippi Teachers' Association, has suggested that some districts will abolish public schools " . . . because of what some political bosses are saying . . . "

"They will try the private school plan, this will fail, and in three years, they will come back to the public school system . . . sound reasoning and economics will bring them back."

---

[66] A comprehensive special report on "Segregation Academies" was published in the Southern Regional Council's monthly digest of southern affairs, South Today, October, 1969. The report estimated that 300,000 students are attending segregated private schools in the 11-state South.

PART IV

THE ROLE OF THE JUDICIARY

Weaknesses in Court-Ordered Desegregation

The July 3 statement affirmed that the administration would place greater emphasis on Justice Department litigation to enforce school desegregation. Historically, this approach has produced less desegregation than the Title VI administrative procedures. In the first 10 years after the Brown decision, progress towards desegregation was negligible. By 1963, court-ordered desegregation had placed only 1.17 per cent of the black pupils in the 11 southern states in school with whites. In the 1968-69 school year, 20 per cent of black students were in desegregated schools. In court-ordered districts, the figure was 11.5 per cent; in districts under Title VI enforcement, 25.6 per cent.[67] Alabama, which has been under a statewide court order since 1967, had only 7.4 per cent of her students in desegregated schools in 1968, the lowest percentage in the South except Mississippi with 7.1 per cent.

---

[67] Data are from a report released by the Office of the Secretary, U. S. Department of HEW, January 16, 1969. The faster pace of desegregation in districts under HEW's Guidelines compared with districts under court orders is also reported in "Federal Enforcement," pp. 35-36.

In the past, several disadvantages have resulted from relying solely on the courts to effect desegregation. Some federal judges in the South opposed to desegregation have succeeded in using the judicial process to delay rather than to speed desegregation. A most recent example of this practice involved school districts under federal court order in the western district of Louisiana. In these cases, the presiding judge refused to accept HEW's Title IV prepared plans which generally required total desegregation in 1969-70. Apparently appraised by the administration that delays in school desegregation would be acceptable, federal Judge Ben Dawkins accepted many plans prepared by local districts promising desegregation in 1970-71 and later.[68] Writing prior to the Supreme Court's historic decision, Gary Orfield observed, "Facing lower court intransigency and lacking the support of the national administration, the Fifth Circuit Court of Appeals has given up on the effort to enforce 1969 deadlines.[69]

Another disadvantage of judicial proceedings has been that school districts under court orders continue to receive federal funds even though the districts often take few meaningful steps to eliminate the dual school system. Thus, incentive to make changes is drastically reduced.[70]

---

[68] The Washington Post, July 29, 1969, reports that Harry S. Dent, Special Assistant to the President, furnished the information by telephone. Some HEW officials involved in preparation of the plans have indicated that Justice Department representatives had informed the judge that the Department would accept post-1969 terminal dates even before HEW submitted its original plans. See also "Federal Enforcement," p. 42.

[69] Orfield, op. cit., p. 78.

A policy recently initiated by the Justice Department provides one further reason for skepticism over the effectiveness of the judicial effort. Under the present administration, compliance personnel in the Office for Civil Rights have been prohibited from reviewing plans prepared by Title IV EEOP experts for court order districts. In other words, those federal officials whose primary responsibility is to set and enforce the standards for desegregating districts have been excluded from the process of reviewing the plans prepared by the Title IV officials.

According to the U. S. Civil Rights Commission, a factor limiting the effectiveness of Justice Department enforcement of desegregation plans has been inadequate manpower.[71] On September 29, Jerris Leonard said "nothing would change" if the court ordered immediate desegregation. Leonard asserted that the court could not enforce its own court order and that the Department lacked the "bodies and the people" to enforce that kind of legal decision.[72]

---

[70] See "Federal Enforcement," p. 38.

[71] Ibid., p. 47.

[72] The New York Times, October 30, 1969.

On October 24, Leonard backed down from his previous pronouncement, explaining that he had been "extremely tired" at the September news conference. He said he was now prepared to do whatever the court ordered in the Mississippi cases. On the day after the decision, unofficial sources at the Justice Department said that enough attorneys were available to implement the decision.[73] Senator Edward Kennedy stated that he would try to add more money to a pending appropriations bill to insure that adequate manpower was available.[74] Civil rights advocates have suggested that the Justice Department could supplement its resources by relying much more heavily on HEW personnel to help monitor court order plans.

Justice Department Inaction

The extent to which the Supreme Court's decision will mitigate the disadvantages of the judicial process partly depends on the administration's response. Although Attorney General Mitchell pledged to use "every available resource" to implement the court's mandate, initial actions indicated that his department was not seriously interested in immediate desegregation.

---

[73] The Birmingham News, October 30, 1969.

[74] Attorney General Mitchell had earlier testified that he was "prepared to accept congressional cutbacks on administration requests for new personnel." Orfield, op. cit., p. 78.

On November 5, the department filed with the Fifth Circuit Court of Appeals its suggested order for desegregation of the 30 Mississippi districts. The order requested even more time for the local districts to formulate their own desegregation plans and suggested no timetable for completing desegregation, leaving this responsibility to the court and attorneys for the children. The position of the government contrasted sharply with the desegregation timetable filed by the Legal Defense Fund requesting desegregation within eight days.[75]

Assistant Attorney General Jerris Leonard announced early in November that the Justice Department would not initiate suits in any of the more than 100 southern districts which, before October 29, had submitted "acceptable" voluntary plans to HEW promising complete desegregation in September, 1970.[76] This position makes more difficult any upgrading of the plans which HEW might wish to undertake.

Even more discouraging to those people wanting vigorous implementation of the court's decision is the fact that the Justice Department refuses to act even in districts already involved in litigation. The failure of Justice to enforce the court's decision in these cases was challenged by legal action coordinated by the Washington (D. C.) Research Project. On November 26, 1969, black parents from 16 school districts in seven southern states filed a suit against Attorney General John Mitchell, alleging that Mitchell, Jerris Leonard, and other Justice Department officials had violated their obligations under the United States Constitution and the 1964 Civil Rights Act.

---

[75] In carrying out the higher court's mandate by its order to desegregate completely all but three of the schools by December 31, the Circuit Court of Appeals did not accept the Justice Department's official position on school desegregation.

[76] The Washington Post, November 10, 1969.

The 16 districts involved are part of 108 districts in the South where the Justice Department had instituted desegregation suits in federal courts prior to October, 1969. Some of these districts still lack court-approved desegregation plans while others have approved terminal 1970 or 1971 plans.[77] Private litigants have had difficulty in maintaining legal action to speed desegregation because the Justice Department is the original and only plaintiff. Part of the black parents' allegation is that the Justice Department has "conspired with, and are aiding and abetting, state officials in violating" the Fifth and Fourteenth Amendment rights of of the black school children involved.

---

[77] Included in the court-approved terminal plans would be districts like those in South Carolina which, through political intervention last spring (discussed on pp. 14-15) succeeded in postponing total desegregation from September, 1969, to September, 1970. Motions to speed desegregation would seem to be especially appropriate in those cases.

Civil rights lawyers view the failure of the Justice Department to file immediate desegregation motions in any of the 108 districts as a deliberate act to impede enforcement of the Supreme Court's mandate. One of the lawyers, Richard Sobol, cited the political disadvantages for President Nixon's "southern strategy" as a primary reason for the inaction. Sobol accused Mitchell of searching out the political implications of enforcing the law in lieu of law enforcement. He added, "I don't think the administration wants anything to happen."[78]

On November 17 and 18, 1969, the 14 active judges of the U. S. Fifth Circuit Court of Appeals sat _en banc_ in Houston to hear 13 desegregation cases which had been in federal courts for several months. Differences between the Justice Department and the Legal Defense Fund continued to be evident as their respective lawyers presented arguments. For example, the position of the Justice Department on the timing of desegregation still gave the court the responsibility for setting desegregation deadlines in each case. The LDF lawyers pressed for the end of segregated schools by February, 1970.

On December 1, the appeals court handed down its order which approved two-step desegregation plans in all 13 cases.

---

[78] The Atlanta _Journal_, November 26, 1969.

The first step required desegregation of faculties and staff, transportation services, athletics, and other extra-curricular activities by February 1, 1970. But the second step, student desegregation, was postponed until the fall of 1970.[79]

Civil rights advocates expressed surprise and disappointment at the court's refusal to order any immediate increase in student desegregation. In applying the Supreme Court's decision to the 30 Mississippi districts, the appeals court on November 7 had ordered total student desegregation in 27 of the cases and partial student desegregation in three cases by December 31. In the 13 _en banc_ cases, the Fifth Circuit cited the "absence of merger plans" for all of the districts as one reason for delaying the movement of students.[80] However, in many of the cases, plans for total desegregation were on record. Lawyers for the Legal Defense Fund had argued vigorously for the early implementation of these plans.

Within days after the Fifth Circuit's decision, Legal Defense Fund lawyers indicated that they immediately would file with the Supreme Court an application for review of the lower court's order. A spokesman for the Fund said that the _Alexander_ decision permits _no_ delay in student desegregation beyond the time required for working out the mechanics of transferring the students. He also stated that it was illogical for the lower court to delay student desegregation for nine months while simultaneously ordering immediate desegregation in all other areas.

---

[79] The New York _Times_, December 2, 1969.

[80] The New York _Times_, December 2, 1969.

The Legal Defense Fund's aggressive implementation of the Supreme Court's mandate on the timing of desegregation led government sources to suggest that the Fund will become the "real Justice Department." As one of the Fund's lawyers put it: "We're all alone in this thing." Jack Greenberg has indicated that since the court has accepted the principle that " . . . integration should exist during litigation, we are going to press for such relief in all pending school cases."

PART V

CONCLUSION

> "Under explicit holdings of this court, the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools."
>
> --The U. S. Supreme Court in
> Alexander v. Holmes,
> October 29, 1969.

The most important factor contributing to the growing resistance to desegregation had been the absence of leadership on the part of administration officials. The President, never articulating clearly his own views at the policy level, had let the words of men such as Senator Thurmond stand in the South as the position of his administration.[81]

In the days immediately following the Supreme Court's historic decision, the administration's leadership continued to be weak. Responding to the decision 18 hours after it had been rendered, the President issued a statement which was cautious, emphasizing that "practical and human problems" are involved "in eliminating school desegregation." He indicated that he intended to " . . . use the leadership resources of the executive branch . . . to assist in every possible way . . ." the resolution of the problems. A few hours later, the White House press secretary said flatly that the administration would carry out the court's mandate.

---

[81] See the Atlanta Constitution editorial, September 3, 1969.

At his press conference on September 26, the President had described as "extreme" a position similar to the one later upheld by the court with respect to the timing of desegregation.[82] His response to the court's decision was an improvement over his previous statement. "But," as the New York Times commented, "effective leadership requires something more positive than the reiteration of the difficulty of past problems . . . ."[83]

The positive steps announced by HEW concerning districts which have reneged or have failed to submit acceptable desegregation plans represent a potentially effective response to the decision. But even these actions fail to take full advantage of the decision because the department refuses to revise any of the 1970 voluntary plans in the light of the new judicial standards calling for immediate desegregation. The department also has not made structural and administrative changes to eliminate delays in the Title VI enforcement procedures.

In court order districts where it previously supported

---

[82] The President had said, "It seems to me that there are two extreme groups . . . those who want instant integration and those who want segregation forever . . . we need to have a middle course between those two extremes . . . ." The New York Times, September 27, 1969.

[83] Ibid., October 31, 1969.

1970 or post-1970 terminal plans, the Justice Department refuses to take legal action requesting the courts to require a faster rate of desegregation. Given the Justice Department's failure, the Legal Defense Fund and other private litigants have assumed the primary burden for initiating litigation in accord with the new legal policies.

Finally, the President himself has not spoken out in support of the new steps which are being taken to implement the court's decision. Without the political and material support essential for effective implementation, the recently announced administrative policies may become simply good intentions.

Administrations in Washington have never provided the political support or taken the political risks required to complete school desegregation in the South. But never before has the executive branch had such a decisive and straightforward mandate to eliminate dual school systems. It will be a modern American tragedy if this call for justice in public education goes largely unheeded by the nation's top political leaders.

In the immediate aftermath of the Supreme Court's ruling, southern civil rights forces were viewing the decision with a kind of cautious optimism, born of long and sad experience with the ways of southern resistance. One field worker who has been involved in school desegregation for many years noted that it was ironical that one had even to ask what the decision meant for the South. "In any other kind of case, where the Supreme Court makes a ruling, the presumption is that it will be enforced. We didn't see that kind of enforcement with Brown. We haven't seen it in fifteen years since then." For the truth was that the segregationist South had come to think during the preceding ten months that the administration was genuinely going to succeed in preserving for a long time some semblance of "separate but equal schools."

It seemed likely that the administration would give the appearance of trying, somehow, still to please everyone, even those who have encouraged violation of the law. The Justice Department seemed determined to act as a "conciliator" with white officials in the Deep South rather than take advantage of an unprecedented opportunity to spearhead civil rights enforcement.

But one thing was certain -- the Supreme Court had dealt a moral and legal blow to that aspect of the administration's so-called "southern strategy" which cynically appealed to the most reactionary of southern and national attitudes and practices. The court seemed to be telling us that after 15 years, the country deserves more than the continuation of a sophisticated game of partisan politics on school desegregation.

: - :